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IN THE

Supreme Court of the United States

No. 71-13

W. A. BOYLE, C. W. DAVIS, AND JOSEPHINE ROCHE, TRUSTEES, UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950,

Petitioners,

v.

THOMAS LAVELLA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM OF RESPONDENT IN OPPOSITION

Robert C. Handwerk
Southern Building
Washington, D.C. 20005
Counsel for Respondent

Washington, D. C. · THIEL PRESS · 202 · 393-0625

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QUESTION PRESENTED

The respondent has no objection to the statement of the question presented by petitioners except the last portion thereof which states: "* * * when under admitted trust authority neither Section 302(c)(5), nor the Trust Indenture provides for or required such vesting?" (Pet., p. 2). Respondent has not admitted such authority, and no such authority exists.

STATEMENT OF THE CASE

The petitioners, W. A. Boyle and Josephine Roche, were removed as trustees of the pension fund by the U.S. District Court for the District of Columbia in case entitled, *Blankenship, et al v. Boyle, et al*, C.A. No. 2186-69, effective July 15, 1971, for violation of duties as trustees. On June 14, 1971, this Court refused Boyle a stay. The co-trustee, Josephine Roche, resigned as trustee on July 1, 1971. The trust indenture (App. to Pet. at pp. 8a to 9a), provides that "there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30¢) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale." It does not state that such payment shall be made on the per ton of coal that the *operator produced*, (italics ours). In 1956 the petitioners sent respondent to Gaylord Farms, Wallingford, Connecticut, for treatment and rehabilitation, but he was not cured and continued to suffer from black lung disease. However, petitioners failed and refused to give him any further medical attention or care.

The District Court below granted petitioners' motion for summary judgment without a written opinion. In the appeal below, respondent in his statement of the issues presented for review assigned, among other issues, the following:

> "Is he compelled to meet trustee regulations even though he admittedly was too ill to comply therewith, such illness having been contracted as a result of working in the coal mines since 1929?"

ARGUMENT

As we shall demonstrate below, there are no valid reasons for granting the writ. A careful reading of the petition illicits the information that the petitioners agree there are vested rights in respondent, and others, but that they have become divested upon the passing of a new resolution. They agree that respondent had all the eligibility requirements under Res. 10 (App. to Pet. at pp. 14a, 15a), except age.

This resolution provided that respondent would be eligible for pension if he attained the age of 60 years, or over, at the time of his application for pension. However, by petitioners subsequent Resolution 63, dated January 4, 1965 (App. to Pet. at pp. 18a to 20a) the requirement of age 60 was lowered to 55 years or over at the date of his application for pension. This change was made specifically applicable to an applicant *who prior to February 1, 1965 had permanently ceased work in the bituminous coal industry as an employee of an employer signatory to the National Bituminous Coal Wage Agreement of 1950, as amended.* Respondent had permanently ceased working in the coal industry as of 1955, suffering from silicosis (black lung disease). Under Res. 10, respondent could not have been awarded a pension until age 60. Res. 63 did not provide that prior 20 years' service was repealed, but merely provided that any applicants who had not already served twenty years under a prior resolution, must so serve 20 years within a 30-year period prior to filing application for pension. The 20 within 30 year requirement, therefore did not apply to Lavella, who was clearly entitled to a pension when he reached age 55. He worked for a signatory operator, Shawmut Mining Company and New Shawmut Mining Company, who contributed to the pension fund upon coal produced by Lavella and other miners. In addition, petitioners arbitrarily thwarted and called for naught, respondent's employment in the coal mines from 1929 to 1937, being arbitrary in not giving him credit therefor, and disregarding the very purposes of Sec. 302(c)(5), Labor Management Relations Act, 1947 (61 Stat. 157; 29 U.S.C. Sec. 186(c)(5); the purpose of which was to provide pensions to coal miners who had already worked in the mines for a long time prior to passage of the Act in order to have them continue in the mines, and be an incentive to obtaining a pension after twenty years of work in the coal industry.

AS TO VESTING OF RIGHTS IN THE COAL MINER BENEFICIARIES OF THE TRUST

It has long been recognized in private pension plans that employees have vested rights to pension benefits. The term, "vesting" refers to an employee's *nonforfeitable right* to share in his pension fund even if he leaves his job before retirement, (italics ours). The Labor Management Relations Act, supra, Sec. 186(c)(5) provides that the money paid to the trust fund is "for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from *occupational activity* or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; * * *." (Italics ours).

The appellate court below correctly held that respondent's rights vested under Res. 10, supra, except for his age. Res. 63, supra, reducing the age to 55 did not specify that coal mine employees would be excluded from obtaining pensions, who had qualified prior thereto except for age. The resolution was not made retroactive and could not equitably so provide.

Petitioners quote from dicta of Judge Leventhal on page 9 of their petition. Suffice it to say, however, that when petitioners in the court below filed a suggestion for a rehearing *en banc* on the same question of vesting and maturing of pension rights, as they petition here, no Judge requested a vote thereon, which included Judge Leventhal.

It is elementary law that trustees of a trust, statutory, testamentary, or otherwise, hold the legal title to the trust *res;* and therefore the provision in the trust indenture that title vests in the trustees of the fund so that no benefits or monies payable from the fund shall be subject to transfer, assignment, pledge, etc., meaning also that the monies are not subject to attachment. However, the trustees hold the legal title to the moneys in the fund merely for the sole use and benefit of the beneficiaries of the trust, such as respondent, and other coal miners, for award of pensions, etc. It is fundamental that equity has exclusive jurisdiction of trusts, statutory, or otherwise, and that the trustee's only duty is to the beneficiaries thereof, which closes the door to any argument whether a beneficiary thereof has a vested right therein, or a matured right. The petitioners would have this Court believe that they as mere trustees of the fund had authority to provide for vested rights in the beneficiaries, but it is elemental that they have no such power. Their sole duties and responsibilities have been outlined above. The settlors of the trust made it very clear that the trust is for the sole and exclusive benefit of the employees as set forth in the trust instrument and did not give the trustees *power,* or *discretion,* to change or divest such benefits in any manner, shape, or form. What clearer language could the settlors have used to show that the beneficiaries were the only persons in whom the rights under the trust vested and matured? The trust does not provide that such rights shall exist at the whim and caprice of the trustees, as contended by petitioners. The court below was therefore abundantly correct in holding that when respondent had qualified under Res. 10, supra, his right to pension fully vested when he became 55 years of age, and as his employers had contributed to the Pension Fund in behalf of respondent, a subsequent resolution could not wipe out respondent's vested and matured rights. This Court is asked by petitioners to hold that all rights and contributions to the Fund obtained by respondent should be confiscated and forfeited because by the passage of a subsequent resolution they could equit-

ably do so at will. The lower court gave no credence to such a request.

THE ERRONEOUS CLAIM OF PETITIONERS THAT THE OPINION BELOW COULD PUT THE FUND IN FINANCIAL JEOPARDY

The petitioners want this Court to review the opinion below on information they do not possess and on conclusions, arguing that the opinion has a financial impact on the trust fund, or may have that effect. There is nothing in the record herein to support their claim; nor did the appellate court have that question before it. Throughout the entire record of this case, these removed trustees have not shown the slightest interest in respondent's permanent black lung disability caused by his occupational activity while working in the coal mines, and they pray the aid of this Court to continue their efforts to defeat respondent's claim for pension.

This Court is not interested in experiences under the Federal Coal Mine Health and Safety Act of 1969, having already been advised by respondent and petitioners that the trust indenture fully provides for care of black lung victims and payments of pensions to them, a duty which petitioners have totally disregarded as found by the court below.

Their statement on page 11 of their petition for the writ that the fund could be inundated because of this coal miner's claim for pension, and others similarly situated, is a conclusion and a supposition which this Court cannot and would not review. It is to be noted that the Lavella doctrine is not as stated by petitioners. The Court below did not hold as a general principle that all black lung victims are entitled to pensions, as petitioners would have this Court believe. The lower court correctly held that Lavella had qualified under Res. 10 except for age: and went on further to hold that because of his black lung permanent disability he could no longer work in the coal industry. Petitioners ask this court to uphold their contention that under

a later resolution, respondent had to keep on working, whether he could or not, in order to qualify for pension. Such a position of any trustee is untenable and contemptible.

Their contention that the current number of Fund pensioners would increase by one-third to over 100,000 is based solely on supposition unsupported by any evidence in the record. This Court will hardly review the case below because two suits have now been filed thereunder.

It is astounding to read their supposition and fear in the petition that the opinion of the court below could put the fund in financial jeopardy when in the certified report of the United Mine Workers of America Welfare and Retirement Fund for the year ending June 30, 1970, it is stated that the fund had an *unexpended* balance on June 30, 1970 of *$151,088,014 after* the income for that year and expenditures for pensions, hospital and medical care, etc. and administration expenses of *$5,689,206,* (italics ours).

The writ should not be granted because disability suits have since been filed. They want this Court to hold that coal miners should be barred from bringing disability suits, questioning their administration of the trust. Another error is the statement in the petition at page 12 that the lower court granted respondent a disability pension. A reading of the opinion shows it granted an award of pension on the merits, but petitioners complain that their discretionary powers have been interferred with. They question the power of the court below to correct, or interfere with, their *discretion.* It is elemental that an equity court will correct an abuse of discretion, etc., as was necessary to be done in the case at bar. Petitioners do not point out the problems which they allege are financial and equitable. We have already pointed out that with their huge unexpended balance on hand as of June 30, 1970, they had no financial problems. It is erroneous for them to give this Court the impression that the pie (trust fund) is in any way liable to be put in financial jeopardy because respondent, and other black lung victims, qualify for pension.

It is further error to assert that the trustees did not provide for disability pensions for employees in the coal industry. The trustees have no power to make such provisions. The settlors of the trust created the trust indenture; not the trustees, and it is clear what the trust provides for.

Petitioners cite *Lee v. Nesbitt, et al.*, Trustees of the National Maritime Trust (C.A. 9th), No. 25973, not yet reported, wherein they state the involuntary separation came about "because he [was] unable to obtain employment due to the temporary unavailability of jobs." Suffice it to say that the court below gave the reason for the involuntary separation of Lavella as due to permanent black lung disease contracted during his many years of work as a coal miner; and that it was impossible for him to continue work in the coal industry.

THE DECISION BELOW IS NOT IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT, AND THERE IS NO CONFLICT IN THE CIRCUITS AS TO WHEN PENSION RIGHTS VEST; CONTRA, THEY AGREE WITH THE DECISION AT BAR

The lower court did not hold that respondent had a vested right in the royalties, or contributions, paid into the trust fund, but held he had sufficiently vested rights in 1952 under the facts of the case. The holding of this Court in *United States v. Embassy Restaurant*, 359 U.S. 29 (1959), a bankruptcy case, is not applicable.

In *Joint Industry Board of Electrical Industry v. United States*, 391 U.S. 224 (1968), a bankruptcy case, it was held by this Court that the contributions to the welfare fund were payable only to the trustees, and that nothing was payable to employees *except upon the occurrence of certain events* (italics ours). These events were stated at page 227 as:

> "Until death, retirement after age 60, *permanent disability*, entry into military service, or cessation of participation under the plan, no benefits were payable." * * * (Italics ours)

In the case at bar, the court below held that the respondent suffered from *permanent disability* as therein stated, and was entitled to pension. Therefore, the respondent's case is not in any way in conflict with the two decisions of this Court just cited.

We will demonstrate below that none of the cases cited by petitioners which were decided in the various circuits are in conflict with the decision at bar as to when pension rights vest.

In *Schneider, et al. v. McKessin & Robbins, Inc.*, 254 F.2d 827, (C.A. 2, 1958), it was held that under the plan, pensions were payable only to participants and appellants ceased to be participants when they were discharged. Respondent here was not discharged but was totally prevented from continuing his occupation in the coal industry because of black lung disease. The court in *Schneider* held that under the facts, appellants had no interest in the pension fund.

Petitioners cite, *Sparta v. Lawrence Warehouse Company, et al.*, 368 F.2d 227 (C.A. 3, 1966), in which the court recognized vested rights such as here claimed. We quote from page 228 of the opinion, as follows:

> "* * * Indeed, the measure of the vested pension rights of any employee who retired shortly thereafter and before the December, 1961, amendment would necessarily be increased by taking into account the interest relinquished by the plaintiff.* * *". (Italics ours).

In *Finell, et al. v. Cramet, Inc., et al.*, 289 F.2d 409, (C.A. 6, 1961), the employees who brought the suit were discharged by their employer prior to termination of employer's business, and who were not eligible for retirement benefits, had no interest in the trust fund. Again such facts are entirely dissimilar with the facts in the case at bar. Respondent here had never been discharged by his employer.

Again, *Smith v. Union Carbide Corporation*, 350 F.2d 258, (C.A. 6, 1965), supports the case at bar and is not in conflict therewith.

The appellate court remanded the case back to the arbitrators to decide the question of total and permanent disability of the appellant. The court below in the Lavella case correctly decided that he was permanently disabled and petitioners did not show otherwise.

Suffice it to say that in *Local Lodge 2040, Internat'l Assn. of Mach. v. Servel, Inc.*, 268 F.2d 692 (C.A. 7, 1959), that court in regard to vested rights of employees held as follows at page 695:

> "* * * The unions claim no pecuniary interest in the benefits the individual plaintiffs seek to recover, and they could not properly do so *since these rights flow directly to the employees.* * * *" (Italics ours).

THE FEDERAL LAW ESTABLISHED IN THE LAVELLA CASE IS NOT NEW BUT ELEMENTARY

Petitioners' contention is that the lower court's finding that respondent is a black lung victim discriminates against those who are well and able to continue work in the coal industry and may some day deprive them of pension. They pray that this Court hold that black lung victims with 20 years' service (whose employers contributed to the pension fund, as here), constitute a class of beneficiaries without vested rights. Such beneficiaries are chastised by petitioners for "not having to work" and for being entitled to a retirement pension when they reach retirement age. The petitioners ignore the fact that respondent was unable to continue work in the coal industry because of his occupational disease contracted on the job. They try to justify their position by comparing respondent's status to an employee discharged, or laid off for cause, or economic conditions. Such a comparison is not only unfair but inequitable. They are praying this Court to review the decision and decide what illnesses of miners are "endemic to the industry." It is elemental that the dread disease of black lung is endemic to the coal industry.

The decision they seek to have reviewed does not in any way apply to a miner who involuntarily ceased work because of illness or injury resulting from *non-mining connected illnesses or injuries.*

As to *Lewis v. Benedict Coal Corp.*, 361 U.S. 459 (1960), the case at bar does not involve the enforcement of collective bargaining agreements but a proper and equitable administration of the trust indenture which the discharged petitioners failed to perform, as heretofore stated.

As apropos, we quote the following two sentences from the decision of this court in Benedict at page 468:

> "* * * It is a commonplace of modern industrial relations for employers to provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death. While employers in many other industries assume this burden directly, this welfare fund was jointly created by the coal industry and the union for that purpose. * * *"

This Court has, therefore, already established a body of federal law concerning the trust fund here in question and so have the federal cases cited by petitioners, all of which support respondent.

In reference to pension plans and rights of employee, we quote the following from Sec. 4. Contractual obligation, in 42 A.L.R. 2d (Ann.) at page 469:

> "* * * It seems clear that where the pension plan is reached as a result of collective bargaining and is embodied in a labor contract, it is contractual in nature and enforceable according to its terms. * * *"

In *Vallejo, et al. v. American R. Co. of Puerto Rico, et al.*, 188 F.2d 513 (C.C.A. 1) (1951), it was held in a collective bargaining agreement with a union that appellants (employees) were considered qualified and entitled to pension when satisfying the requirements as to age and service. That upon meeting these requirements an employee's pension rights has matured.

Finally, the questions of vested rights and matured rights of an applicant for pension in the administration of the United Mine Workers of America Welfare and Retirement Fund of 1950, were included in *Kosty v. Lewis,* 319 F.2d 744, (D.C. Cir. 1963) in which this Court denied certiorari, 375 U.S. 964 (1964).

Petitioners have failed to show special and important reasons under Rule 19(b) of this Court.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Robert C. Handwerk
Counsel for Respondent

July 1971